



JOHN J. LEAVITT  
P.O. BOX 6478  
SAN JOSE CA 95150-6478

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**JUL 10 2006**

**OFFICE OF PETITIONS**

In re Application of  
Rascon  
Application No. 10/668,712  
Filed: September 23, 2003  
Attorney Docket No. 4615  
For: RETENTION APPARATUS AND METHOD  
FOR STABILIZING CONCRETE FORMS

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(a), filed on June 12, 2006 (certificate of mailing date June 11, 2006).

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(a)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely reply to the Notice of Allowance and Fee(s) Due, mailed February 16, 2006, which set a non-extendable three month period for reply. No timely reply being received, this application became abandoned on May 17, 2006. A Notice of Abandonment was mailed on June 23, 2006.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(l) (\$250.00); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) a terminal disclaimer, if required.

Any revival petition under 37 CFR 1.137 must be accompanied by the petition fee. The payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

The phrase "[o]n filing" in 35 U.S.C. § 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R.Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[the fees set forth in this section are due on filing the petition]"). Accordingly, the Director is statutorily precluded from further review of the petition until the petition fee is paid in full.

A review of Office records indicates that petitioner has paid a \$700.00 issue fee, a \$110.00 terminal disclaimer fee, and a \$55.00 petition fee. Since a terminal disclaimer is not required in this case, the money that would have been applied to the terminal disclaimer fee will be applied towards the \$250.00 petition fee. Therefore, petitioner owes \$85.00.

The petition under 37 CFR 1.137(a) is dismissed.

**Petitioner is urged to submit the \$85.00 balance due for the petition under 37 CFR 1.137(a). The merits of the instant petition will not be addressed until the petition fee is paid.**

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**By hand:** U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

**By FAX:** (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions